

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

v.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-MV/KK

RIO CHAMA STREAM SYSTEM

Section 3: Rio Cebolla

**SCHEDULING AND PROCEDURAL ORDER FOR DETERMINATION OF
PRIORITY DATES AND IRRIGATION WATER REQUIREMENTS IN THE RIO
CEBOLLA SUBSECTION OF SECTION 3 OF THE RIO CHAMA STREAM SYSTEM**

This Order is entered by the Court pursuant to Federal Rules of Civil Procedure Rule 16(b) to guide the course of the determination of priority dates and irrigation water requirements in the Cebolla Subsection of Section 3 of the Rio Chama Stream System.

I. DETERMINATION OF PRIORITY DATES

A. Under the July 25, 2000 *Procedural Order for the Adjudication of Water Rights Claims in the Rio Nutrias, Rio Cebolla and Canjilon Creek Sections of the Rio Chama Stream System* (Doc. 5913), as amended August 8, 2001 (Doc. 6321), the adjudication of priority dates and irrigation water requirements will be initiated by the State of New Mexico (“the State”) following the completion of individual subfile activity. As individual subfile activity has been completed in all subsections of Section 3, the only remaining elements to adjudicate in the Cebolla Subsection for surface water irrigation use are priority dates and irrigation water

requirements.

B. Pre-1907 Surface Water Irrigation Rights

The State proposes the following priority dates for pre-1907 water rights associated with the ditches listed below. Ditches that convey water with both pre-1907 and post-1907 water rights are marked with an asterisk (*). The acreage for post-1907 water rights is detailed in Section C below (Post-1907 Surface Water Irrigation Rights).

<u>DITCH</u>	<u>PRIORITY DATE</u>
Acequia del Pinavetal *	1883
Acequia Madre de Cebolla	1875
Alto Ditch*	1889
Atencio North Ditch	1882
Atencio South Ditch	1882
Canuto Valdez Ditch	1897
Cordova-Maes North Ditch	1875
Emiliana Maes South Ditch	1906
Felipe Archuleta Ditch	1903
H.B. and G.C.-Martinez Ditch	1878
Julian Serrano Ditch	1906
Maes South Ditch	1876
Martinez-Cordova North Ditch	1879
Martinez-Cordova South Ditch	1879
Montano-Martinez Ditch	1882

Nicomedes Trujillo Ditch	1904
Old Valdez Ditch	1878
Quintana Ditch	1875
Sanchez Ditch	1898
CHCB-001-0002	
Ernest Sanchez	
Margie K. Sanchez	
Sanchez Ditch	1905
CHCB-001-0007	
Charlie Chacon	
Geralda M. Chacon	
Skelly-Maes Ditch	1906
Trujillo-Lopez Ditch	1898
Unnamed Ditch No. 1	1875
Unnamed Ditch No. 2	1875
Venceslao Martinez Ditch	1886

C. Post-1907 Surface Water Irrigation Rights

The State of New Mexico proposes the determination of the following priority dates for lands in the Cebolla Subsection that are irrigated under an approved permit or final license issued by the Office of the State Engineer, or under an approved permit for the transfer of irrigation water rights as described below. (Please note: if you have both pre-1907 and post-1907 water rights on a single ditch, only the post-1907 water rights acreage is detailed below.)

<u>SUBFILE</u>	<u>OSE PERMIT / LICENSE</u>	<u>ACRES</u>	<u>PRIORITY DATE</u>
CHCB-001-0001F	No. 2686	10.60	November 21, 1949
Azalea Maes	Acequia del Pinavetal		

Celeste Maes
 Immanuel Maes
 Joshua Maes
 Lorie Maes
 Petra Maes

CHCB-001-0004 Tobias H. Sanchez	No. 2738 Acequia del Pinavetal	1.70	August 3, 1951
CHCB-003-0001 Galina V. Vigil Frederick R. Vigil	No. 2631 Alto Ditch	23.30	March 29, 1948
CHCB-003-0002 Pablo Archuleta Juan Archuleta	No. 2631 Alto Ditch	25.10	March 29, 1948
CHCB-003-0022 Adela Martinez David R. Martinez	No. 2631 Rincon Blanca Ditch	20.00	March 29, 1948
CHCB-006-0001 Arthur F. Hibner Revocable Trust	No. 2658 Sixto Alire Ditch "A"	47.30	November 18, 1948
	No. 2658 Sixto Alire Ditch "B"	21.80	November 18, 1948
	No. 2658 Sixto Alire Ditch "C"	63.50	November 18, 1948
	No. 2658 Emiliana Maes North Ditch	28.10	November 18, 1948
CHCB-007-0001 Jedburgh Ltd.	No. 2631 Rincon Blanca Ditch	10.00	March 29, 1948

CHCB-007-0002A Donna M. Martinez Leroy A. Martinez	No. 2631 Rincon Blanca Ditch	15.00	March 29, 1948
CHCB-007-0002B Martinez Ranch Partnership	No. 2631 Rincon Blanca Ditch	30.00	March 29, 1948
CHCB-007-0003 Gustavo Martinez Rosina Martinez	No. 2631 Rincon Blanca Ditch	40.90	March 29, 1948
CHCB-007-0004 Mary Jo Martinez	No. 2631 Rincon Blanca Ditch	17.30	March 29, 1948
CHCB-007-0005 Heirs of Gilberto Martinez	No. 2631 Rincon Blanca Ditch	4.80	March 29, 1948
CHCB-007-0007 Alice Martinez Max D. Martinez	No. 2631 Rincon Blanca Ditch	2.00	March 29, 1948
CHCB-008-0001 Clyde C. Baker Theresa Baker	No. 2631-2735 Rincon Blanca Ditch	320.00	March 29, 1948

D. Transferred Water Rights:

<u>MOVE-TO LOCATION</u>	<u>DITCH</u>	<u>OSE PERMIT</u>	<u>PRIORITY DATE</u>
CHCB-002-0001B Charlie Chacon Gerald M. Chacon	Chacon Ditch	No. 0636-D	1883

E. The adjudication of water right priorities in the Cebolla Subsection shall be completed in a show cause proceeding modeled on the process used in the determination of

priority dates in Section 7, Village of Chama. *See Scheduling and Procedural Order for Determination of Priority Dates and Irrigation Water Requirements in the Village of Chama Subsection of Section 7 of the Rio Chama Stream System* filed May 30, 2013 (Doc. 10915). The form of Notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with either: (1) the priority date proposed by the State for their own irrigation water rights or, (2) the priority dates proposed by the State for any other irrigation water rights in the Cebolla Subsection. The Notice and Order to Show Cause will be served by mail on all defendants in the Cebolla Subsection.

In the absence of an objection to the priority dates proposed by the State, the Court will enter a final order with respect to priority dates of all irrigation water rights in the Cebolla Subsection. The determination of priority dates shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 3, to object, prior to the entry of a final decree. The defendants in the Cebolla Subsection will be informed that they will have no other opportunity to protest priority date determinations of the irrigation water rights in the Cebolla Subsection, and that subsequent *inter se* proceedings in the Cebolla Subsection will not include the opportunity to object to those determinations.

In cases where defendants in the Cebolla Subsection have previously agreed with the State on the priority for their water rights, and those priority dates have been incorporated into subfile orders entered by the Court, those priority dates cannot be challenged by those defendants. However, other persons with standing may file objections.

The State shall publish the Court's *Public Notice and Order to Show Cause* to inform defendants and all persons having water rights of any type in the Cebolla Subsection of their right

to participate and offer evidence in support of objections to the proposed determination of priority dates and irrigation water rights in the Cebolla Subsection. The approved Public Notice shall be published once a week for four consecutive weeks in the *Rio Grande Sun*.

II. DETERMINATION OF IRRIGATION WATER REQUIREMENTS

A. Pre-1907 Surface Water Irrigation Rights

The State proposes the following irrigation water requirements for pre-1907 surface water irrigation use in the Cebolla Subsection:

- a. The weighted consumptive irrigation requirement (CIR) is 1.09 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 2.725 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 4.54 acre-feet per acre per annum.

The ditches in the Cebolla Subsection to which these amounts apply are those identified in paragraph I. B above (Pre-1907 Surface Water Irrigation Rights), with the exception of those lands that are irrigated under an approved permit or final license issued by the Office of the State Engineer, which lands are identified in paragraph I. C above (Post-1907 Surface Water Irrigation Rights). The irrigation water requirements for lands irrigated under an approved permit or final license issued by the Office of the State Engineer are identified in paragraph II. B below (Lands Irrigated Under an Approved Permit or Final License from the State Engineer).

The irrigation water requirements in the Cebolla Subsection described above do not include diversion requirements associated with stockwatering, stockponds, or other impoundments having valid water rights, which will be determined at a later date in these proceedings.

B. Lands Irrigated Under an Approved Permit or Final License from the State Engineer

The State proposes the determination of the following irrigation water requirements for irrigation water use on lands in the Cebolla Subsection that are irrigated with surface water under an approved permit or final license issued by the Office of the State Engineer, as described below:

OSE LICENSE NO. 2686

Acequia del Pinavetal
CHCB-001-0001F

- a. CIR = 1.09 acre-feet per acre per annum.
- b. FDR = 3.00 acre-feet per acre per annum.
- c. PDR = 5.00 acre-feet per acre per annum.

OSE LICENSE NO. 2738

Acequia del Pinavetal
CHCB-001-0004

- a. CIR = 1.09 acre-feet per acre per annum.
- b. FDR = 3.00 acre-feet per acre per annum.
- c. PDR = 5.00 acre-feet per acre per annum.

OSE LICENSE NO. 2658

Sixto Alire "A," "B," and "C;" and Emiliano Maes North Ditches
CHCB-006-0001

- a. CIR = 1.09 acre-feet per acre per annum.
- b. FDR = 3.00 acre-feet per acre per annum.
- c. PDR = 5.00 acre-feet per acre per annum.

OSE LICENSE NO. 2631

Alto Ditch
CHCB-0003-0001
CHCB-003-0002

- a. CIR = 1.09 acre-feet per acre per annum.

- b. FDR = 3.00 acre-feet per acre per annum.
- c. PDR = 5.00 acre-feet per acre per annum.

Under OSE License No. 2631, from April 1st to October 1st of each year, water may be diverted into the Alto Ditch at the rate and in the amount of surplus or rejected flows as indicated by the flow at the mouth of El Rito de la Cienega Redonda or the flow of Cebolla Creek just below the mouth of Emiliana Maes North Ditch, whichever is the lesser. During the remainder of the year, from October 1st to April 1st, water may be diverted into the Alto Ditch at a rate of 15 cubic feet per second at times needed.

OSE LICENSE NOS. 2631; 2631-2735

Rincon Blanca Ditch

CHCB-003-0022; CHCB-007-0001; CHCB-007-0002A; CHCB-007-0002B; CHCB-007-0003; CHCB-007-0004; CHCB-007-0005; CHCB-007-0007; CHCB-008-0001

- a. CIR = 1.09 acre-feet per acre per annum.
- b. FDR = 3.00 acre-feet per acre per annum.
- c. PDR = 5.00 acre-feet per acre per annum.

Under OSE License Nos. 2631 and 2631-2735, from April 1st to October 1st of each year, water may be diverted into the Rincon Blanca Ditch at the rate and in the amount of surplus or rejected flows as indicated by the flow at the mouth of El Rito de la Cienega Redonda or the flow of Cebolla Creek just below the mouth of Emiliana Maes North Ditch, whichever is the lesser. During the remainder of the year, from October 1st to April 1st, water may be diverted into the Rincon Blanca Ditch at a rate of 15 cubic feet per second at times needed.

OSE LICENSE NO. 0636-D

Chacon Ditch

CHCB-002-0001B

- a. CIR = 1.09 acre-feet per acre per annum.
- b. FDR = 3.00 acre-feet per acre per annum.
- c. PDR = 5.00 acre-feet per acre per annum.

The irrigation water requirements in the Cebolla Subsection described above do not include diversion requirements associated with stockwatering, stockponds, or other impoundments having valid water rights, which will be determined at a later date in these

proceedings.

C. The adjudication of irrigation water requirements in the Cebolla Subsection shall be completed in a show cause proceeding using the procedures described above in connection with the determination of priority dates for water rights in the Cebolla Subsection. The form of Notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with the irrigation water requirements proposed by the State for use in the Cebolla Subsection. The Notice will be served by mail on all defendants in the Cebolla Subsection.

In the absence of an objection to the irrigation water requirements proposed by the State, the Court will enter a final order with respect to irrigation water requirements in the Cebolla Subsection. This determination of irrigation water requirements shall be subject to the right of water rights claimants in other Sections, as well as in other Subsections of Section 3, to object, prior to the entry of a final decree. The defendants will be informed that they will have no other opportunity to protest the determination of irrigation water requirements in the Cebolla Subsection, and that subsequent *inter se* proceedings in the Cebolla Subsection will not include the opportunity to object to this determination.

In cases where defendants in the Cebolla Subsection have previously agreed with the State on the irrigation water requirements for their water rights, and those amounts have been incorporated into subfile orders entered by the Court, those amounts cannot be challenged by those defendants. However, other persons with standing may file objections.

III. NOTICE

The Notice shall be mailed to the last known address of individual subfile defendants as

they are listed in the Court's records. The State shall not be required to make a determination of current ownership of any tracts, nor mail Notice to persons that are not a party to these proceedings. A successor-in-interest to an individual subfile defendant may request substitution of parties under Fed.R.Civ.P. 25(c) in order to participate in these proceedings.

The State shall publish the Court's *Public Notice and Order to Show Cause* to inform defendants and all person having water rights of any type in the Cebolla Subsection of their right to participate and offer evidence in support of objections to the proposed determination of irrigation water requirements in the Cebolla Subsection. The approved Public Notice shall be published once a week for four consecutive weeks in the *Rio Grande Sun*.

The State shall coordinate the mailing of the Notice and publication of the Public Notice regarding the determination of priority dates and irrigation water requirements so that these events and the stated deadlines therein occur in a coordinated manner.

After the deadline has expired for filing protests to the proposed determination of priority dates and irrigation water requirements, the State shall submit a proposed scheduling and procedural order to address and resolve any objections that are filed with the Court.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Kirtan Khalsa", written over a horizontal line.

KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE